IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of case

Appeal From Order No. 211 of 2005
With
Appeal From Order No. 269 of 2005

Date of Decision: 07 November 2006

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

Date. Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 211 of 2005

1. Sri Akbar Hussain S/o Sri Ahmad Noor.
2. Smt. Mehrunnisa W/o Sri Akbar Hussain.
   Both R/o Mohalla Kachcha Bagh,
   Bahadur Gunj, Moradabad
   District Moradabad (U.P.). ……. Appellants

Versus

Uttaranchal State Roadways Transport Corporation,
Nainital through its Regional Manager,
Regional Office Tallital,
Nainital. ……. Respondent

Mr. Lalit Sharma, Advocate for the appellants.
Mr. A.N. Sharma, Advocate for the respondent.

With

Appeal From Order No. 269 of 2005

Uttaranchal Transport Corporation,
through its Regional Manager,
Regional Office Tallital,
Nainital. …… Appellant

Versus

1. Sri Akbar Hussain S/o Sri Ahmad Noor.
2. Smt. Mehrunnisa W/o Sri Akbar Hussain.
   Both R/o Mohalla Kachcha Bagh,
   Bahadur Gunj,
   District Moradabad (U.P.). …….
   Respondents

Mr. A.N. Sharma, Advocate for the appellant.
Mr. Lalit Sharma, Advocate for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

The impugned Award dated 29.03.2005 passed by Motor Accident Claims Tribunal / Addl. District Judge, Nainital in

Motor Accident Claim Petition No. 90 of 2004 has given rise to the filing of these two appeals i.e. A.O. No. 211 of 2005 and A.O. No. 269 of 2005.

2. A.O. No. 211 of 2005 is at the behest of the claimants for enhancement of the compensation awarded by the Tribunal, whereas A.O. No. 269 of 2005 has been preferred by Uttaranchal Transport Corporation against the Award.

3. The claimants, who are unfortunate parents of deceased Aslam, claimed compensation of Rs. 10,00,000/- for his death in the motor accident on 27.02.2004 when the Bus bearing registration No. UP06-4140, in which he was travelling, met with an accident due to the rash and negligent driving of its driver and fell in a gorge resulting in the instantaneous death of several occupants of the Bus including claimants' son Aslam. The claimants pleaded that their son Aslam used to earn Rs. 5,000/- per month by working in a manufacturing unit of brass wares at Moradabad.

4. The Transport Corporation, owner of the Bus, contested the claim and denied its liability to pay compensation to the claimants on the plea that the driver of the Bus was not responsible for the accident.

5. The claimants examined PW1 Akbar Hussain in support of their claim, whereas the Transport Corporation did not examine any witness in rebuttal, but adduced in evidence certified copy of the deposition of Bus Conductor M.D. Kotwal recorded in the other Claim Petition No. 77 of 2004 (Vimla Arya & others Vs. U.P.S.R.T.C.).

6. The Tribunal, on the evidence led by the parties, held that claimants' son Aslam died on account of the injuries sustained by him in the motor accident; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the Transport Corporation, being the owner of the Bus, was liable to pay compensation to the claimants.

7. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 2,000/- per month and Rs. 24,000/- per annum on its own estimate. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 16,000/- per annum. By multiplying the annual dependency of Rs. 16,000/- with the multiplier of '17', the compensation was worked out to Rs. 2,72,000/-. By awarding Rs. 10,000/- under other heads, the Tribunal awarded a total sum of Rs. 2,82,000/- as compensation to the claimants for the death of their son Aslam in the motor accident. The Tribunal, further, directed the Transport Corporation to pay interest at the rate of 7% per annum on the amount of compensation in the event of its failure to pay compensation to the claimants within a period of one month from the date of the Award.

8. Mr. Lalit Sharma, the learned counsel for the claimants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 2,000/- per month and Rs. 24,000/- per annum only; in awarding low compensation of Rs. 2,82,000/- to the claimants; and in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of Transport Corporation's failure to pay the amount of compensation to the claimants within a period of one month from the date of the Award.

9. Mr. A.N. Sharma, the learned counsel for the Transport Corporation, on the other hand, submitted that the Tribunal has erred in selecting the higher multiplier of '17'; and in awarding excessive compensation of Rs. 2,82,000/- to the claimants.

10. The findings recorded by the Tribunal that claimants' son Aslam died on account of the injuries sustained by him in the motor accident on 27.02.2004 and the driver of the Bus was responsible for the accident are based on the evidence available on record. On due consideration of the evidence, we are satisfied that the above findings recorded by the Tribunal do not suffer from any infirmity whatsoever. We, therefore, affirm these findings.

11. In a motor accident claim case, what is important is that the compensation to be awarded by the Court / Tribunal should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as

> regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
>
> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

12. The claimants pleaded that their son Aslam used to earn Rs. 5,000/- per month, but no cogent and reliable evidence was led by the claimants to establish the said income of the deceased. We, therefore, do not find any fault with the approach of the Tribunal in discarding the claimants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 2,000/- per month and Rs. 24,000/- per annum deserves to be reconsidered, as the same is on the lower side. Deceased Aslam was aged about 22 years on the date of the accident. He could have easily earned Rs. 100/- per day even as an unskilled labourer. The income of the deceased, therefore, ought to have been assessed at Rs. 3,000/- per month and Rs. 36,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs.3,000/- per month and Rs. 36,000/- per annum.

13. By deducting 1/3rd of Rs.36,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 24,000/- per annum.

14. The multiplier of '17' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** wherein it has

been held that, in a case, where the claimants are parents of the deceased, the multiplier should never exceed '10'. Thus, in the present case also, the appropriate multiplier would be '10' only.

15. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '10', the compensation works out to Rs. 2,40,000/-. The claimants are further entitled to Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Estate. Thus, the claimants become entitled to receive a total sum of Rs. 2,50,000/- as compensation for the death of their son Aslam in the motor accident.

16. The Tribunal has fallen into error in not awarding any interest on the amount of compensation to the claimants. By directing only a conditional payment of interest by the Transport Corporation in the event of its failure to pay the amount of compensation to the claimants within a period of one month from the date of the Award, the Tribunal has deprived the claimants of the amount of interest, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The accident, in the present case, took place on 27.02.2004 and the claim petition was filed on 21.04.2004. The impugned Award was passed by the Tribunal on 29.03.2005 and 50% of the amount of compensation awarded by the Tribunal was deposited by the Transport Corporation in compliance of this Court's order dated 28.06.2005. Taking all the above-mentioned relevant factors into consideration, we quantify the amount of interest at Rs. 32,000/-.

17. The claimants, therefore, become entitled to receive a total sum of Rs. 2,82,000/- (Rupees Two Lakhs and Eighty Two Thousand only) [Rs. 2,50,000/- towards Compensation + Rs. 32,000/- towards Interest].

18. The Transport Corporation shall deposit the balance amount within a period of two months from today before the concerning Claims Tribunal. The amount, if any, deposited by the Transport Corporation towards interim award shall be given due adjustment by the Claims Tribunal. The Registry is directed to transmit the sum of Rs. 25,000/-, deposited by the Transport Corporation as mandatory deposit under Section 173 of the Motor Vehicles Act 1988, to the concerning Claims Tribunal immediately.

19. With the above direction, both the appeals i.e. A.O. No. 211 of 2005 and A.O. No. 269 of 2005 stand disposed of.

20. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C. J.)**
07.11.2006 07.11.2006

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